IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr. Appeal 320 of 2000

Decided on 30.07.2007

State of H P .....Appellant

Versus

Prem Chand and another ..... Respondents

Coram:

The Hon'ble Mr. Justice Surinder Singh.J.

Whether approved for reporting ?[1]
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For the appellant **Mr. V K Verma, Additional Advocate General.**

For the Respondent **Mr. R K Gautam, Senior Advocate, with Mr Anurag Sharma, Advocate.**

Surinder Singh, J.(oral)

The respondents were put on trial before the Chief Judicial Magistrate, Kullu, District Kullu (HP) for offences punishable under Sections 447, 427 read with Section 34 of the Indian Penal Code. After the complete trial, the respondents were acquitted in Police Challan No.450-1/95 184-2/95 decided on 18.2.1999.

In brief the prosecution case has been that the respondents on 24.7.1995 had dismantled

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes.***

the boundary wall of the complainant, which he had erected on the same day, around his plot. It is an admitted fact that the land of respondents abuts the land of the complainant, over which they have constructed a house. It is alleged that in between both the plots, there was a common passage which was encroached by the respondents by raising construction The complainant alleged that while he was raising the boundary wall around his plot, the passage to the house of Prem Chand through the plot of the complainant was being closed, thus a compromise was effected between the parties in the presence of Sonam Norvu and Rajinder Thakur. As per the compromise, the complainant was to leave one Karam wide passage through his plot in lieu thereof the respondent Prem Chand was to pay Rs.20,000/- in installments but the respondent aforesaid did not honour the compromise. Therefore, on 24.7.1995 the complainant Balbir got erected the boundary wall which is alleged to have been dismantled. Police sought demarcation of the land of the complainant from Bhola Ram, Field Kanungo (PW-1). The prosecution relied upon the demarcation report Ex.PW-1/B prepared by him which was accompanied by a copy of Jamabandi, for the year 1988-89, Ex.PW-

1/B and Tatima Ex.PW-1/C. In the cross-examination he has stated that he did not mention dimension of Khasra No.2397/2310/1802 and details of dimensions. It is admitted by him that he only demarcated the plot of the complainant and not of the respondents. The respondents had engaged Shri Tulsi Ram a retired Field Kanungo (PW-8), at the time of demarcation, who has clearly stated that the demarcation was not given properly and in accordance with the rules. He disowned his statement, recorded by the police, under Section 161 CrPC. There was a boundary dispute, therefore, the demarcation was required to be conducted by a competent revenue officer not below the rank of A.C.Ist Grade in accordance with the instructions issued by the Financial Commissioner in this behalf. Legally Field Kanungo was not competent to demarcate the land. It is also not spelt by him as to who had authorized him to conduct the demarcation of the disputed land, even otherwise the report of PW-1 Kanungo with respect to the demarcation is discrepant. To prove the offences charges against the respondents, it is essential to prove that the land on which the respondents dismantled the wall fell in the possession of the

complainant as claimed by him. Smt. Tikami Devi (PW-4) and Pingla Devi (PW-5) are admittedly inimical towards the respondents. The trial court has extensively dealt with all the relevant points on record. No substantive evidence was left untouched and without appreciation.

On the re-appraisal of the evidence on record, I also came to the same conclusion, as arrived by the trial court, therefore, I do not find any thing worth interference in the impugned judgment of acquittal.

The point taken by Mr Verma, learned Additional Advocate General that the impugned judgment was based on conjectures and surmises is worth rejecting. The appeal is dismissed.

The respondents are discharged of the bail bonds, entered upon by them, during the proceedings of the trial, at any stage.

July 30, 2007 (Surinder Singh), J.
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